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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

NO. 1126

SAM NICK FARINELLA and
WILLIAM JOSEPH DARA

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MILTON E. GRUSMARK and
NATALIE BASKIN
Attorneys for Petitioners
1674 Meridian Avenue
Miami Beach, Florida

Petitioners DARA and FARINELLA file Petition for Rehearing of Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit and state:

I

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit filed by Petitioners, DARA and FARINELLA was denied by this Court on April 28, 1969.

II

Petition for Writ of Certiorari sought review of the decision of the appellate court affirming adjudication of guilt and sentence of each Petitioner for Hobbs Act violations by robbery and extortion interfering with interstate commerce.

III

Petitioners and others were charged in a five count information, two counts charging robbery and attempted extortion on September 13, 1966, two counts charging robbery and attempted extortion on September 14, 1966, and a fifth count charging conspiracy to obstruct commerce by robbery, and extortion. Upon trial by jury Petitioners were acquitted of the counts charging conspiracy and robbery and extortion on September 14, 1966.

IV

Petition for Writ of Certiorari presented questions negating federal jurisdiction by indicating that under the Hobbs Act, 18 U.S.C. 1951, an effect on interstate commerce must

be shown, but could not be shown where movement in commerce had terminated or jurisdiction was not activated.

V

Petitioners contend in this Petition for Rehearing that they were deprived of a fair trial and deprived of due process of law by the admission of voluminous testimony and confusing exhibits concerning charges of which they were adjudicated innocent.

The transcript of testimony comprises approximately a thousand pages. However, testimony pertaining to the charges resulting in Petitioners' conviction comprises only approximately one hundred pages. In fact, the entire criminal act upon which conviction was based was the statement "Look what I found" and the handing of $2,000.00 to co-defendant Esperti.

Petitioners were particularly prejudiced by the inclusion of exhibits, especially the sum of $2,000.00 in United States currency, since the jury could readily but mistakenly conclude that the money it saw was concrete or tangible evidence of its existence, when in fact the $2,000.00 admitted into evidence dealt with matters at another time and place.

VI

The nature of the joinder of numerous counts against numerous defendants deprived Petitioners of a fair trial with due process of law by confusing the jury and by expanding the alleged crime into a continuing matter existing over a period of days, weeks or months.

VII

The result of the confusion was a verdict of guilty on two charges totally inconsistent with each other and with the evidence.

VIII

The inconsistency is apparent from an examination of definitions under the Hobbs Act. Robbery requires, by definition under the Hobbs Act, an unlawful taking from the person or in the presence of another, against his will. Extortion, however, is defined under the Act as obtaining the property of another with his consent. On the slim testimony pertaining to the charges in this case, not only was the verdict inconsistent, it was also the result of confusion by the jury. Because the sum involved on September 13, 1966, was so similar to the sums involved on September 14, the inconsistent verdict necessarily resulted.

IX

It is respectfully submitted that the Court overlooked or failed to consider the foregoing reasons for granting Petition for Writ of Certiorari. No evidence whatsoever sustained the conviction for extortion of $25,000.00 by Petitioners, obviously a result of confusion by the jury concerning $25,000.00, $2,000.00, $2,500.00, $25,000.00 and $2,000.00 among other sums appearing, reappearing and emphasized both in testimony and evidence on charges of bribery, extortion and robbery of which Petitioners were acquitted.

X

Subsequent to the filing of Petition for Writ of Certioari, co-defendant Esperti filed his Petition for Writ of Certiorari. Petitioners FARINELLA and DARA requested this Court to consider the arguments contained in Petitioner Esperti's Petition on their behalf, but that request was refused by this Court. Petitioners DARA and FARINELLA, on Petition for Rehearing now request that this Court consider the arguments propounded by Petitioner Esperti in their behalf, since those arguments obtain equally to all three Petitioners.

XI

For the foregoing reasons it is respectfully submitted that this Court should grant, on rehearing, Petition for Writ of Certiorari.

MILTON E. GRUSMARK and
NATALIE BASKIN
Attorneys for Petitioners
1674 Meridian Avenue
Miami Beach, Florida

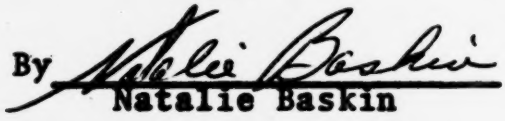
By Natalie Baskin
Natalie Baskin

I HEREBY CERTIFY that a true copy of the foregoing Petition for Rehearing of Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit was mailed to Erwin N. Griswold, Solicitor General, Washington, D.C., Will Wilson, Assistant Attorney General, c/o Department of Justice, Washington, D.C. 20530, William G. Earle, Department of Justice, Criminal Division, Post Office Box 1070, Miami, Florida 33010 and Jerome M. Feit and Roger A. Pauley, Department of Justice, Washington, D.C. 20530, this ____ day of May, 1969.

Natalie Baskin

I HEREBY CERTIFY that the foregoing Petition for Rehearing is presented in good faith and not for delay.

MILTON E. GRUSMARK and
NATALIE BASKIN
Attorneys for Petitioners
1674 Meridian Avenue
Miami Beach, Florida

By 
Natalie Baskin